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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,869	04/16/2004	Harold Edward Price	0021-49 CON	8604
25901	7590	05/06/2009		
ERNEST D. BUFF ERNEST D. BUFF AND ASSOCIATES, LLC. 231 SOMERVILLE ROAD BEDMINSTER, NJ 07921			EXAMINER BLAIR, DOUGLAS B	
			ART UNIT 2442	PAPER NUMBER
			MAIL DATE 05/06/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/825,869

Applicant(s)

PRICE, HAROLD EDWARD

Examiner

DOUGLAS B. BLAIR

Art Unit

2442

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

The applicant has amended claims 7 and 15. Claims 7-16 are currently pending.

Response to Arguments

Applicant's arguments with respect to claims 7-16 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,233,226 to Gringeri et al. in view of U.S. Patent Number 6,449,719 to Baker.

As to claim 7, Gringeri teaches a system for distributing streaming media via a data communications medium such as the Internet, said streaming media being composed of a plurality of time-sequenced data elements, comprising: (a) a server connected to said data communications medium for transmitting said data elements (Figure 2 and corresponding text); (b) a server buffer for storing up to a pre-determined number of said data elements for transmission (Figure 4 and corresponding text); (c) means for supplying said server buffer with said data elements (Figure 4 and corresponding text); (d) server buffer manager means for

deleting the data element that is the oldest from said server buffer for each new data element to be received into said server buffer when said server buffer is full (Figure 5 and corresponding text); (e) at least one user computer connected to said data communications medium (Figure 4 and corresponding text); (f) transmission means associated with said server for sending said data elements stored in said server buffer to said user computer via said data communications medium (Figure 4 and corresponding text); (g) a user buffer associated with said user computer and being provided with means for storing up to a predetermined number of said data elements, which predetermined number may be different from said predetermined number of data elements to be stored in said server buffer (Figure 4 and corresponding text); (h) receiving means associated with said user computer for receiving data elements sent from said server via said data communications medium, and for storing said received data elements in said user buffer (Figure 4 and corresponding text); (i) playing means for playing out audio/video material from said user buffer, said playing out comprising generating audio or video on said user computer from said data elements (Figure 4 and corresponding text); (j) deleting means for deleting said played out data elements from said user buffer (Figure 4 and corresponding text); and (k) sending means when said user buffer is not full, to send data elements from said server buffer to said user computer at a rate faster than the rate at which said data elements are played out (Figure 4 and corresponding text); however Gringeri does not explicitly teach said transmission means is configured to receive notification from said user computer of the level of filling of said user buffer and to cause said server to cease sending said data elements while said user buffer is full and thereafter to resume sending said data elements.

Baker teaches a system wherein said transmission means is configured to receive notification from said user computer of the level of filling of said user buffer and to cause said server to cease sending said data elements while said user buffer is full and thereafter to resume sending said data elements (Fig. 2, claim 9, col. 2, lines 35-39, and col. 8, lines 6-24).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the applicant's invention to combine the teachings of Gringeri regarding buffer management with the teachings of Baker regarding client buffer feedback because feedback ensures that the client buffer will not be overwritten (Baker, col. 8, lines 6-24). Combining Gringeri with Baker would not require any significant modifications to Gringeri because the modeling taught by could be implemented independent of feedback with feedback providing an additional layer of client buffer protection.

As to claim 8, Gringeri teaches the system as recited by claim 7, wherein said means for supplying said server buffer with said data elements is a disk file (Figure 4 and corresponding text);.

As to claim 9, Gringeri teaches the system as recited by claim 7, wherein said means for supplying said server buffer with said data elements is a source computer, providing said data elements as they are generated (Figure 4 and corresponding text);.

As to claim 10, Gringeri teaches the system, as recited by claim 7, wherein said server sends said data elements to said user computer at a data rate as fast as the data connection between said server and said user computer will support when said user computer buffer is not full (Figure 4 and corresponding text);.

As to claim 11, Gringeri teaches the system as recited by claim 7, wherein said user computer is an Internet radio or Internet Appliance (Figure 4 and corresponding text);.

As to claim 12, Gringeri teaches the system as recited by claim 7, further comprising control means for said server to prevent sending said data elements to a user computer until said server buffer has stored said pre-determined number of data elements (Figure 4 and corresponding text);.

As to claim 13, Gringeri teaches the system as recited by claim 7, further comprising pointer maintaining means for maintaining a record for each user computer of the last data element that had been sent by said server to said user computer, and for actuating said sending means when said user computer buffer is not full, to enable said sending means to send additional data elements to said user computer at a rate as fast as the connection between said server and said user computer will support, said pointer maintaining means being arranged to maintain said pre-determined number of data elements in said user buffer (Figure 4 and corresponding text);.

As to claim 14, Gringeri teaches a system as recited by claim 7, further comprising recording means for maintaining a record for each user computer of the last data element that had been received by said user computer, and, when said user computer buffer is not full, for requesting said sending means to send additional data elements to said user computer, said recording means arranged to maintain said pre-determined number of data elements in said user buffer, and said sending occurring at a rate as fast as the connection between said server and said user computer will support (Figure 4 and corresponding text);.

As to claims 15 and 16, they are rejected for the same reasons as claims 7-14.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOUGLAS B. BLAIR whose telephone number is (571)272-3893. The examiner can normally be reached on 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Douglas B Blair/
Primary Examiner, Art Unit 2442